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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION No. 347 of 1995

CUTTACK THIS THE 22nd DAY OF JUNE, 2001

P.K. Rao Applicant

-Vrs-

Union of India and others Respondents

For Instructions

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN
6, 2001

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 347 of 1995
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
THE HON'BLE SHRI G. NARASIMHAM, MEMBER (J)

.....

Shri P. KRISHNA RAO, 39 years,
Son of late Shri Narayana,
at present residing at Door No. 9/276,
Budara Valasa, Rayagada, Dist-Rayagada,
Pin-765 001

.....Applicant

By the Advocate(s) M/s A.K. Misra,
S.K. Das
S.B. Jena
J. Sengupta

-VERSUS -

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. Divisional Railway Manager, S.E. Rly, Waltair,
3. The Senior Divisional Personnel Officer South Eastern Railway, Waltair. Respondent(s)

By the Advocate(s) Mr. Ashok Mohanty

Som.

SOMNATH SOM, VICE-CHAIRMAN: In this original application the petitioner has prayed for a direction to the opposite parties to regularise the services of the petitioner as a Class IV employee in any of the Departments of the Railway Administration including operation.

2. The case of the applicant is that he worked as a substitute from 06.08.1974 to 09.03.1976, from 14.01.1977 to 22.01.1977 and from 18.04.1977 to 17.05.1977. He has stated that after 1977 the Railways stopped substitute appointment and thereafter the applicant was not engaged as a substitute. Earlier he had worked as substitute of one Shri K. Appalaswamy. In pursuance of respondents circular dated 17.07.1989 and 13.09.1989 he had applied for re-engagement. The list of retrenched substitutes was prepared by Divisional Personnel Officer Waltair. This list is at Annexure-3 and in the enclosure to the list, applicants name appears against Sl. No.52. He has stated that a screening test was held of all the listed candidates on 28th and 29th November, 1989 at Waltair and the applicant had attended the screening with all necessary documents. Out of the candidates who attended the screening only 84 persons were engaged and made permanent. The result of the screening was never published. The applicant filed representation for his engagement but without any result. South Eastern Railway Men's Union also took up this case but without any favourable orders. The applicant has stated that persons who had worked prior to 1981 have been considered and therefore for no reason his case has been ignored. He has further stated that some of his Juniors have been regularised

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He has stated that as a retrenched candidate he has to be given preference in re-engagement. He has also stated that his right to livelihood under Article 21 of the Constitution has been violated. In the context of the above he has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that in pursuance of the decision of the Hon'ble Supreme Court in the case of Shri Indarpal Yadav Vrs. Union of India. (1985) 2 Supreme Court Cases 648 a circular was issued on 17.07.1989 to all the subordinate offices of the Waltair Division to submit the names of the retrenched substitutes. In response to the above circular large number of applications were forwarded to respondents 2 and 3. It was stipulated in the circular that persons who have worked after 01.01.1981 for a period of more than 120 days are to be listed for re-engagement in future. On Scrutiny of the applications received, a lot of discrepancies were noticed and the list of all the applicants was forwarded to the Subordinate Authorities under whom the retrenched substitutes were alleged to have worked and those Subordinate Authorities were directed in letter dated 21.11.1989 in Annexure-3 to the O.A. to verify the genuineness of the claim of prior engagement and to direct the eligible applicants to appear for screening on 28th and 29th November, 1989. Accordingly screening was held and a panel was drawn up. Respondents have stated that as the applicant by his own admission had not worked after 01.01.1981 he was not found eligible to be included in the panel. Respondents have denied that the applicant worked as substitute of Shri K. Appalaswamy. They have stated that certificates at Annexure 1-series have been

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obtained from different Station Masters of different Railway Stations and authenticity of these certificates is doubtful. It is also stated that the screening took place in 1989 and the applicant has approached the Tribunal in 1995 and the application is barred by limitation. It is also stated that result of the screening test held in November, 1989 was actually published. The applicant made a representation through the Union only in 1993 and Union was informed that he is not entitled for re-engagement. On the above grounds respondents have opposed the prayer of the applicant.

4. In his rejoinder the applicant has reiterated that he had worked from 1974 to 1977 on the dates noted by us earlier. He has also stated that there is no logic in giving engagement only to those who have been served after 1981. On the above ground the applicant has reiterated his prayer in his rejoinder.

5. We have heard Shri A.K. Mishra Learned Counsel for the petitioner and Shri A. Mohanty Learned Senior Counsel for the respondents and have perused the record. Both the sides have relied on the decision of the Hon'ble Supreme Court in the case of Inderpal Yadav. Respondents have relied on the decision of the Hon'ble Supreme Court in Dhakshin Railway Employees Union, Trivandrum, Division Vrs. General Manager, Southern Railway AIR 1987 SC 1153.

6. We have considered the submissions made by the Learned Counsel of the both sides carefully. Before proceeding further it has to be noted that the above two decisions of the Hon'ble Supreme Court relate to Project Casual Labour and does not relate to substitutes. According to the averment of the applicant

himself he has not worked as substitute after 17.05.1977. He has stated in para 4.1 of the application that after 1977 Railways stopped engagement of substitute. Even if this is accepted it is clear that the applicant was not available for engagement after 1978. From his representation dated 21.11.1994 at Annexure 6 it is seen that applicant has stated that from 1978 to 1985 he served in Indian Army in the corps of EME. He was discharged from the army in 1985 after completion of his service period. In this representation he has stated that after returning from army he applied to the Waltair Division Railway Manager for appointment in any capacity because of his substitute service in operating department. From the above it is clear that even if it is accepted that the applicant worked as substitute in different shells from 1974 to 1977, from 1978 he was not available to be re-engaged as substitute because he was working in the EME corps of Indian Army. After his retirement from Indian Army he cannot claim that because of his engagement as substitute for short spells from 1974 and 1977 he should be taken back as a substitute. As he has joined in Indian Army in 1978 he is deemed to have forsaken his status as a substitute on his joining Indian Army. Moreover in the present application his prayer is not for re-engagement as a substitute. His prayer is for appointment to a Class IV post. Casual Labourers and substitutes are regularised in Class-IV posts. according to seniority. Applicant cannot claim that because of his rendering service as substitute in short spells from 1974 to 1977 he has a right to be absorbed in Group-IV post in the Railway. This prayer is accordingly held to be without any merit and is

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rejected. The applicant is not also entitled to be engaged as substitute because he has on his admission given up that engagement in 1978 and joined Indian Army.

7. In the result therefore we hold that the application is without any merit and is rejected. No costs.

{ G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN

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